

## PATENT COOPERATION TREATY

## PCT

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

REC'D 01 NOV 2004


Applicant's or agent's file reference 501580	<b>FOR FURTHER ACTION</b>	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).
International Application No. <b>PCT/AU2003/000804</b>	International Filing Date (day/month/year) 26 June 2003	Priority Date (day/month/year) 26 June 2002
International Patent Classification (IPC) or national classification and IPC <b>Int. Cl. <sup>7</sup> H04R 25/00, A61N 1/36</b>		
Applicant <b>COCHLEAR LIMITED et al</b>		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 3 sheets, including this cover sheet.
- ☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheet(s).

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 18 September 2003	Date of completion of the report 12 October 2004
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustalia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer  <b>ROBERT BARTRAM</b> Telephone No. (02) 6283 2215

**I. Basis of the report****1. With regard to the elements of the international application:\***

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,  
pages , as amended (together with any statement) under Article 19,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the sequence listing part of the description:  
pages , as originally filed  
pages , filed with the demand  
pages , received on with the letter of

**2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.**

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

**3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:**

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

**4. ☐ The amendments have resulted in the cancellation of:**

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

**5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\***

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	YES
	Claims 1 to 38	NO
Inventive step (IS)	Claims	YES
	Claims 1 to 38	NO
Industrial applicability (IA)	Claims 1 to 38	YES
	Claims	NO

**2. Citations and explanations (Rule 70.7)**

D1) US 6157861

D2) US 6002966

**Novelty: Claims 1 to 38**

The invention defined in claims 1 to 38 is not novel when compared with prior art document D1 that discloses all the essential features of the invention claimed. Refer to the claims and the abstract for particular relevance. This citation discloses a method and programming apparatus that establishes an initial profile across a plurality of channels and automatically adjusts the profiles in the presence of a stimulation signal. The appended claims appear to introduce features that are explicitly disclosed in D1 and hence are also considered to be not novel.

Similarly the invention defined in claims 1, 2, 5, and 6 is not novel when compared with prior art document D2 that discloses all the essential features of the invention claimed. Refer to column 16 line 5 to column 17 line 7 for particular relevance.

**Inventive step: claims 1 to 38**

Regarding D1 claims 1 to 38 as above.

Regarding D2 claims 1, 2, 5, and 6 as above. Claims 7 to 22, and 25 to 38 are considered to introduce features that are not inventive in light of D2 as they appear to introduce features that are either well known in the art or minor workshop variations to the inventive concept.

**Industrial Applicability: Claims 1 to 38**

All claims satisfy the industrial applicability criteria in the field of hearing prosthesis.